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SUBJECT: SHANGHAI LEADS OUT ON JUDICIAL IP PROTECTION

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SUBJECT: Shanghai Leads Out On Judicial IP Protection

¶1. (SBU) Summary: Building on its reputation as high caliber center for judicial intellectual property (IP) protection, Shanghai has taken a number of measures since October to highlight and strengthen its judicial capabilities. On October 29, Shanghai held a ceremony for the establishment of the Shanghai Intellectual Property Arbitration Court with the support of the Shanghai IP Administration and the Shanghai Arbitration Commission (SAC). Shanghai also proclaimed November to be the "IPR Judicial Protection Action Month," highlighting its judicial IP work with several separate events: a press conference to outline the initiative and summarize Shanghai courts' accomplishments in IPR protection, public IP trials, the announcement of judgments on several high profile IP cases, and a meeting to highlight judicial efforts on enforcing China's National IP Strategy. Besides focusing on judicial IP protection, Shanghai also held its sixth annual International IP Forum in November, focusing on IP "transactions and services." Shanghai courts receive high marks from the U.S. business community for their professionalism and fairness, and as a result, continue attracting large numbers of both foreign and domestic rights holders seeking litigation. By establishing a special IP Arbitration Court, Shanghai hopes to gain a similar reputation for its arbitration abilities. End summary.

Shanghai Promotes Arbitration as an Alternative

¶2. (SBU) In October, Shanghai officially announced the establishment of the Shanghai Intellectual Property Arbitration Court. The Shanghai IP Administration and the Shanghai Arbitration Commission (SAC) backed its establishment as a way to provide an alternative to civil litigation. Vice Secretary General of SAC Huo Zhengmei told Econoff that Shanghai is grappling with a large load of IP cases and is looking to emulate practices in the West promoting increased use of arbitration centers to resolve IP cases. This is the second specialized arbitration court under the SAC after the establishment of the Shanghai Financial Arbitration Court in

12007.

13. (SBU) The Shanghai IP Arbitration Court has 61 arbitrators, including IP administrative officials, lawyers, judges, professors and legal advisers from various companies. The group includes two foreigners (an academic and a lawyer). Decisions from the IP Arbitration Court will be enforced by the Shanghai No. 1 and No. 2 Intermediate Courts. During a speech at the opening ceremony, Shanghai IP Arbitration Court Director Wang Kangwu, who is also the SAC Vice Director, said Shanghai is currently drafting a special IP arbitration rule that would go into effect in the near future. Zhejiang and Jiangsu IP Administrative officials also made remarks, welcoming the establishment of the Court and saying they hoped the Shanghai IP Arbitration Court would be another cooperation platform for IPR protection.

#### Shanghai Highlights IP Judicial Protection

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14. (SBU) As part of its efforts to showcase its judicial IP enforcement, Shanghai proclaimed November to be the "IPR Judicial Protection Action Month" and held several separate events to highlight its efforts. During a press conference to kick off the month, Shanghai High Court Deputy Director Ying Xinlong summarized the courts' accomplishments and experiences in IP adjudication and outlined a list of notable events in the history of IP judicial protection in Shanghai. He also highlighted judicial enforcement elements in China's National IP Strategy.

#### A Public Glimpse Into IP Trials

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15. (SBU) To showcase its judicial proceedings, Shanghai opened several IPR tribunals in district courts, intermediate courts,

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and the High Court for public viewing November 10-13. One of the cases involved copyright infringement via the Internet. Beside allowing members of the public to attend the hearings, the Yangpu District Court and the No. 2 Intermediate Court broadcast case hearings over the Internet. In addition, roundtables to solicit opinions on IPR judicial protection were held in the Shanghai High Court, as well as district courts in Pudong, Huangpu and Yangpu. The Shanghai High Court also published proceedings of 30 "typical" IPR cases. From November 25-26, several lower IPR tribunals followed suit, publishing the judgments of a long list of IPR cases.

#### Wrapping it Up

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16. (SBU) To wrap up its Judicial Protection Action Month, Shanghai High Court publicly announced the judgments of three high profile IP case and held a meeting on November 26, introducing Shanghai judicial efforts to implement the National IP Strategy. The three cases included a trademark infringement case, a copyright infringement case, and an Internet domain name dispute. In all 3 cases, the defendants were all ordered to cease infringement and pay damages. Although statutory damages were applied in all three cases, the amount varied depending on the circumstances of each case.

17. (SBU) In a speech, Shanghai High Court Deputy Director Ying noted the Shanghai High Court has published its opinions regarding the implementation of the National IP Strategy. The opinions listed several measures that Shanghai courts would take to protect IPR: fairly hear civil IPR disputes; supervise and support IPR administrative enforcement; severely punish IPR-related crimes; encourage case settlement through mediation; deepen judicial capacity through a specialized adjudication system; improve investigative techniques on technical facts; decrease costs for safeguarding rights while increase the costs of infringement; and strengthen cooperation with administrative departments and courts in other provinces.

18. (SBU) Regarding building judicial capacity in Shanghai courts, Ying stressed that Shanghai is focused on creating a "specialized adjudication system" and extending the model of combining civil, administrative, and criminal cases into one tribunal. The Shanghai High Court has published guidelines for district level courts on procedures for hearing IPR-related civil, administrative and criminal cases. Ying also announced that the Luwan District Court will be the 4th district level court in Shanghai that has received national Supreme People's Court approval for an IPR tribunal. The three other Shanghai districts previously approved for IPR tribunals are Pudong, Huangpu, and Yangpu.

#### Shanghai's International IP Forum

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19. (SBU) Besides spotlighting judicial IP efforts, Shanghai also sponsored its 6th International IP Forum on November 6. This year's forum focused on "IPR transaction and service." State IP Office Commissioner Tian Lipu, Shanghai Mayor Han Zheng, Shanghai Vice Mayor Zhao Wen, World Intellectual Property Organization Senior Counselor Carlos Mazal and Canadian IP Office Director Mary Carman were among the notable participants in the forum. Together with other speakers from China and a host of other countries, they addressed over 200 attendees, including experts, scholars, government officials and business representatives. They discussed the role of government in IPR transactions, development of laws related to licensing and transfer, the concept of IPR public service, and IPR management within businesses, inter alia.

#### Comment

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10. (SBU) Shanghai courts, widely recognized among both the Chinese and foreign business community for their professionalism and fairness, attract a large number of litigants. Shanghai is

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also on the forefront of judicial transparency in China, regularly publishing rulings on the Internet and opening a wide spectrum of tribunals for public scrutiny. Shanghai's showcasing of its judicial efforts on IP protection only bolsters its reputation. Although IP arbitration is not new in Shanghai (the SAC has long arbitrated IP cases), the establishment of a special IP Arbitration Center shows the city is substantially beefing up its resources in the area and hoping to become a respected center for IP arbitration. Chinese companies hope this move will entice their foreign counterparts to arbitrate locally, saving Chinese companies the heavy costs of arbitrating overseas.

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